

**ASSEMBLY BILL**

**No. 2733**

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**Introduced by Assembly Member Ruskin**

February 19, 2010

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An act to amend Sections 22971 and 22980.3 of, and to add Sections 22980.4 and 22980.5 to, the Business and Professions Code, relating to cigarette and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 2733, as introduced, Ruskin. Cigarettes and tobacco products.

Existing law, the California Cigarette and Tobacco Products Licensing Act of 2003, provides for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California. The act prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are licensed. The act authorizes the board to suspend or revoke the license of any manufacturer, distributor, wholesaler, importer, or retailer of tobacco products that is in violation of the act's provisions. Violation of the act is a misdemeanor.

This bill would, among other things, prohibit the transfer of title or possession of cigarettes or tobacco products without consideration, exchange, or barter if the cigarettes or tobacco products had been purchased for resale under a license issued pursuant to the act and the transfer occurs without a license or after receipt of a notice of suspension or revocation of the license. It would also prohibit specified displays of cigarettes or tobacco products. It would impose prescribed notices to be posted when a license has been suspended or revoked by the board, and would make violation of these posting requirements subject to a

civil penalty. By adding a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 22971 of the Business and Professions  
2 Code is amended to read:  
3 22971. For purposes of this division, the following terms shall  
4 have the following meanings:  
5 (a) "Board" means the State Board of Equalization.  
6 (b) "Importer" means an importer as defined in Section 30019  
7 of the Revenue and Taxation Code.  
8 (c) "Cigarette" means a cigarette as defined in Section 30003  
9 of the Revenue and Taxation Code.  
10 ~~(e)~~  
11 (d) "Distributor" means a distributor as defined in Section 30011  
12 of the Revenue and Taxation Code.  
13 (e) "Law enforcement agency" means a sheriff, a police  
14 department, or a city, county, or city and county agency or  
15 department designated by the governing body of that agency to  
16 enforce this chapter or to enforce local smoking and tobacco  
17 ordinances and regulations.  
18 (f) "License" means a license issued by the board pursuant to  
19 this division.  
20 (g) "Licensee" means any person holding a license issued by  
21 the board pursuant to this division.  
22 ~~(d)~~  
23 (h) "Manufacturer" means a manufacturer of cigarettes or  
24 tobacco products sold in this state.  
25 (i) "Notice" or "notification" means, unless as otherwise  
26 provided, the written notice or notification provided to a licensee  
27 by the board by either actual delivery to the licensee or by

1 *first-class mail addressed to the licensee at the address on the*  
2 *license.*

3 (j) *“Package of cigarettes” means a package as defined in*  
4 *Section 30015 of the Revenue and Taxation Code.*

5 (k) *“Person” means a person as defined in Section 30010 of*  
6 *the Revenue and Taxation Code.*

7 ~~(e)~~

8 (l) *“Retailer” means a person who engages in this state in the*  
9 *sale of cigarettes or tobacco products directly to the public from*  
10 *a retail location. Retailer includes a person who operates vending*  
11 *machines from which cigarettes or tobacco products are sold in*  
12 *this state.*

13 ~~(f)~~

14 (m) *“Retail location” means both of the following:*

15 (1) *Any building from which cigarettes or tobacco products are*  
16 *sold at retail.*

17 (2) *A vending machine.*

18 ~~(g) “Wholesaler” means a wholesaler as defined in Section~~  
19 ~~30016 of the Revenue and Taxation Code.~~

20 ~~(h) “Cigarette” means a cigarette as defined in Section 30003~~  
21 ~~of the Revenue and Taxation Code.~~

22 ~~(i) “License” means a license issued by the board pursuant to~~  
23 ~~this division.~~

24 ~~(j) “Licensee” means any person holding a license issued by~~  
25 ~~the board pursuant to this division.~~

26 ~~(k)~~

27 (n) *“Sale” or “sold” means a sale as defined in Section 30006*  
28 *of the Revenue and Taxation Code.*

29 ~~(t)~~

30 (o) *“Tobacco products” means tobacco products as defined in*  
31 *subdivision (b) of Section 30121 and subdivision (b) of Section*  
32 *30131.1 of the Revenue and Taxation Code.*

33 ~~(m)~~

34 (p) *“Unstamped package of cigarettes” means a package of*  
35 *cigarettes that does not bear a tax stamp as required under Part 13*  
36 *(commencing with Section 30001) of Division 2 of the Revenue*  
37 *and Taxation Code, including a package of cigarettes that bears a*  
38 *tax stamp of another state or taxing jurisdiction, a package of*  
39 *cigarettes that bears a counterfeit tax stamp, or a stamped or*

1 unstamped package of cigarettes that is marked “Not for sale in  
2 the United States.”

3 ~~(n) “Person” means a person as defined in Section 30010 of the~~  
4 ~~Revenue and Taxation Code.~~

5 ~~(o) “Package of cigarettes” means a package as defined in~~  
6 ~~Section 30015 of the Revenue and Taxation Code.~~

7 ~~(p)~~

8 ~~(q) (1) “Control” or “controlling” means possession, direct or~~  
9 ~~indirect, of the power:~~

10 ~~(A) To vote 25 percent or more of any class of the voting~~  
11 ~~securities issued by a person.~~

12 ~~(B) To direct or cause the direction of the management and~~  
13 ~~policies of a person, whether through the ownership of voting~~  
14 ~~securities, by contract (other than a commercial contract for goods~~  
15 ~~or nonmanagement services), or otherwise provided; however, no~~  
16 ~~individual shall be deemed to control a person solely on account~~  
17 ~~of being a director, officer, or employee of such person.~~

18 ~~(2) For purposes of subparagraph (B) of this subdivision, a~~  
19 ~~person who, directly or indirectly, owns, controls, holds, with the~~  
20 ~~power to vote, or holds proxies representing 10 percent or more~~  
21 ~~of the then outstanding voting securities issued by another person,~~  
22 ~~is presumed to control such other person.~~

23 ~~(3) For purposes of this division, the board may determine~~  
24 ~~whether a person in fact controls another person.~~

25 ~~(q) “Law enforcement agency” means a sheriff, a police~~  
26 ~~department, or a city, county, or city and county agency or~~  
27 ~~department designated by the governing body of that agency to~~  
28 ~~enforce this chapter or to enforce local smoking and tobacco~~  
29 ~~ordinances and regulations.~~

30 ~~(r) “Brand family” has the same meaning as that term is defined~~  
31 ~~in paragraph (2) of subdivision (a) of Section 30165.1 of the~~  
32 ~~Revenue and Taxation Code.~~

33 ~~(s) The amendments made to this section by the act adding this~~  
34 ~~subdivision shall become operative May 1, 2007.~~

35 ~~(s) “Wholesaler” means a wholesaler as defined in Section~~  
36 ~~30016 of the Revenue and Taxation Code.~~

37 SEC. 2. Section 22980.3 of the Business and Professions Code  
38 is amended to read:

39 22980.3. (a) Licenses issued pursuant to this division shall be  
40 subject to suspension or revocation for violations of the provisions

of this division or the Revenue and Taxation Code as provided in this section.

(1) In addition to any applicable fines or penalties for a violation, upon first conviction of a violation, a licensee shall receive a written notice from the board detailing the suspension and revocation provisions of this ~~act~~ *division*. At its discretion, the board may also suspend a license for up to 30 days.

(2) In addition to any applicable fines or penalties for a violation, upon a second conviction of a violation within four years of a previous violation the license shall be revoked.

(b) The date of the occurrence of a violation shall be used to calculate the duration between subsequent violations. A violation shall be noted in the license record at the board only after judicial conviction or final adjudication of a violation. Upon updating a record for a violation triggering a suspension, the board shall serve the licensee with a notice of suspension and shall order the licenseholder to ~~immediately~~ *cease the sale, transfer without consideration, exchange, or barter prohibited pursuant to Section 22980.4, and display for sale prohibited pursuant to Section 22980.4, of cigarettes or tobacco products for the period of the suspension. The notice of suspension shall inform the licenseholder of the effective dates of the suspension.*

~~(c) Upon notice of suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products. Continued sales, transfers without consideration, exchange, or barter prohibited pursuant to Section 22980.4, or displays for sale prohibited pursuant to Section 22980.4 after the notification of suspension shall constitute a violation of the licensing provisions of this division and shall result in the revocation of a license.~~

(d) Upon completion of a suspension period, a license shall be reinstated by the board upon certification that all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for the purchase of cigarette and tobacco products are paid.

*(e) Upon updating a record for a violation triggering a revocation, the board shall serve the licensee with a notice of revocation and shall order the licenseholder to cease the sale, transfer without consideration, exchange, or barter prohibited pursuant to Section 22980.4, and displays for sale prohibited*

1 *pursuant to Section 22980.4 of cigarettes or tobacco products on*  
2 *and after the effective date of the revocation.* After a revocation,  
3 a previously licensed applicant may apply for a new license after  
4 six months. The board may, at its discretion, issue a new license.

5 (f) Upon updating a license record for a violation, suspension,  
6 or revocation to a license of a person or entity that owns or controls  
7 more than one location, the board shall send notice in writing of  
8 the violations, suspensions, or revocations within 15 days of the  
9 board's action to the address included in the application and listed  
10 on the license for receipt of correspondence or notices from the  
11 board.

12 (g) Upon suspension or revocation of a license pursuant to this  
13 section, the board shall notify all licensed distributors and  
14 wholesalers by electronic mail within 48 hours of the suspension  
15 or revocation of that license. All licensed distributors and  
16 wholesalers shall provide the board and shall update, as necessary,  
17 an electronic mail address that the board can use for purposes of  
18 making the notifications required by this subdivision.

19 (h) Violations by a licensee at one location may not be  
20 accumulated against other locations of that same licensee.  
21 Violations accumulated against a prior owner at a licensed location  
22 may not be accumulated against a new owner at the same licensed  
23 location.

24 (i) For purposes of this section, a violation includes violations  
25 of the Revenue and Taxation Code relating to cigarettes and  
26 tobacco products, and violations of this division. Only one violation  
27 per discrete action shall be counted towards a suspension or  
28 revocation of a license.

29 SEC. 3. Section 22980.4 is added to the Business and  
30 Professions Code, to read:

31 22980.4. (a) (1) A person or entity that purchases cigarettes  
32 or tobacco products for resale under a license issued pursuant to  
33 this division and then transfers, in any manner or by any means,  
34 title or possession of cigarettes or tobacco products without  
35 consideration, exchange, or barter is guilty of a misdemeanor  
36 punishable as provided in Section 22981 if the transfer occurs  
37 without a license issued pursuant to this division or after receipt  
38 of a notice of suspension or revocation of the license.

39 (2) Continued transfers prohibited pursuant to this subdivision  
40 shall constitute a violation punishable as provided in Section 22981

1 and shall result in the seizure of all cigarettes and tobacco products  
2 in the possession of the person by the board or a law enforcement  
3 agency. Any cigarettes and tobacco products seized by the board  
4 or by a law enforcement agency shall be deemed forfeited.

5 (b) A person or entity that, after receiving a notice of suspension,  
6 continues to display for the purpose of selling or transferring  
7 without consideration, exchange, or barter cigarettes or tobacco  
8 products by placing the cigarettes or tobacco products in a vending  
9 machine or in retail stock so that the cigarettes or tobacco products  
10 are clearly and easily visible is subject, notwithstanding Section  
11 22981, to a civil penalty of one thousand dollars (\$1,000) for each  
12 offense. For purposes of this subdivision, a rebuttable presumption  
13 shall be established that cigarettes or tobacco products that are  
14 clearly and easily visible in retail stock are displayed for the  
15 purpose of selling the cigarettes or tobacco products.

16 SEC. 4. Section 22980.5 is added to the Business and  
17 Professions Code, to read:

18 22980.5. (a) A licensee whose license has been suspended or  
19 revoked by order of the board shall conspicuously post a notice at  
20 both of the following locations:

21 (1) Each public entrance to the retail location. The notice shall  
22 directly face any person who enters the retail location and shall  
23 not be obstructed from view or placed at a height of less than four  
24 feet or greater than nine feet from the floor.

25 (2) Each cash register and other point of retail sale. The notice  
26 shall be posted so as to be readily viewable by a person standing  
27 at or approaching the cash register or other point of retail sale. The  
28 notice shall directly face the purchaser and shall not be obstructed  
29 from view or placed at a height of less than four feet or greater  
30 than nine feet from the floor.

31 (b) The notices described in this section shall be in the size and  
32 form prescribed by the board. The notice shall be provided by the  
33 board and may be reproduced in the same size and form to comply  
34 with subdivision (a).

35 (c) A licensee whose license was suspended shall post the notice  
36 at the retail location that was the subject of the suspension for the  
37 duration of the suspension.

38 (d) A licensee whose license was revoked shall post the notice  
39 at the retail location that was the subject of the revocation for a  
40 30-day period from the effective date of the revocation.

1 (e) Every licensee who fails to post the notices as required by  
2 this section, who alters the notice provided by the board, or who  
3 removes the notice before the posting period required in  
4 subdivision (c) or (d) expires, shall be subject, notwithstanding  
5 Section 22981, to a civil penalty of one thousand dollars (\$1,000)  
6 for each offense.

7 SEC. 5. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.